

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17-CvS-15955

IN THE MATTER OF:

DOUG MILLER PETITION FOR RELEASE  
OF A LAW ENFORCEMENT AGENCY  
RECORDING.

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**ORDER GRANTING PETITION FOR  
RELEASE OF LAW ENFORCEMENT  
AGENCY RECORDING**

THIS MATTER came on for hearing on September 7, 2017 before the undersigned Superior Court Judge presiding in Courtroom 6310 in Mecklenburg County on the Petition for Release of a Law Enforcement Agency Recording which was filed August 28, 2017 by Doug Miller, pursuant to N.C.G.S. § 132-1.4A.

The Petition sought access to certain video recordings in the possession of the Charlotte-Mecklenburg Police Department (“CMPD”) relating to events which took place from September 20, 2016 through September 24, 2016 relating to public protests and demonstrations which occurred in Charlotte after the fatal shooting of Keith Lamont Scott by a CMPD police officer. Petitioner, the Deputy City Editor and Investigations Editor of *The Charlotte Observer*, was represented at the hearing by Jonathan E. Buchan. Also appearing were Judy Emken, legal counsel for CMPD; Assistant District Attorney Clayton L. Jones; and Terry Sherrill, legal counsel for Rayquan Borum (“Mr. Borum”), who has been charged with first degree murder and whose image may appear on some portion of the videos sought.

The Court, having reviewed the Petition, heard arguments from counsel for Petitioner, CMPD, the District Attorney’s Office and Mr. Borum, and having reviewed the only portion of the recordings sought by Petitioner whose release has been objected to, makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. Petitioner sought release pursuant to N.C.G.S. § 132-1.4A(g) of specific portions of the video recordings from certain locations and at specific times at approximately eight (8) separate locations around Charlotte during the period September 20, 2016 through September 24, 2016.

2. The parties required to be served under this statute were properly served and received notice of this hearing.

3. Petitioner and CMPD represented to the Court that the video recordings sought by Petitioner were recordings made from cameras along various Charlotte roads and/or highways by or on behalf of CMPD, except for one of the recordings which was made from a CMPD helicopter on September 20, 2016.

4. These recordings cover the time span September 20, 2016 through September 24, 2016 and generally involve video footage of demonstrations and protests that occurred in Charlotte after the September 20, 2016 fatal shooting of Keith Lamont Scott.

5. CMPD did not object to the release of any of the videos sought by Petitioner. The District Attorney's Office and counsel for Mr. Borum objected only to the release of approximately two (2) minutes of one video recording identified in the Petition as "Omni, 9/21, 20:28 to 20:39 (large group outside Omni)." Those parties requested that the Court redact approximately two (2) minutes of this video. The two (2) minute segment was identified as the portion of this recording beginning at approximately 20:29 and running through 20:31, and that two minute segment will hereinafter be referred to as the "Omni Video Segment." The Assistant District Attorney and counsel for Mr. Borum described the Omni Video Segment as including images of Mr. Borum at

or about the time of the fatal shooting of Justin Carr. Mr. Borum has been charged with first degree murder of Mr. Carr and has entered a plea of not guilty.

6. All parties therefore agreed to the release of all of the video recordings sought by Petitioner except for the Omni Video Segment.

7. The District Attorney's Office and counsel for Mr. Borum argued to the Court that permitting the release of the Omni Video Segment would deprive Mr. Borum of his ability to obtain a fair trial on the charge of first degree murder.

8. Counsel for Petitioner argued to the Court that the release of the Omni Video Segment would not prejudice Mr. Borum's right to a fair trial because (1) it was highly likely that any jurors selected at trial would in fact view this video during trial and (2) there were alternatives available to protect Mr. Borum's right to fair trial such as *voir dire* and admonitions to the empaneled jurors to limit their considerations to evidence presented at trial.

9. The Court, subsequent to the hearing, reviewed portions of the September 21, 2016 video recording taken near the Omni in Charlotte, including the approximately two-minute Omni Video Segment.

**CONCLUSIONS OF LAW**

1. Pursuant to N.C.G.S. § 132-1.4A(g), Petitioner Miller is a "person" with standing to file a Superior Court action seeking an order directing release of these recordings.

2. In applying the balancing test set forth in N.C.G.S. § 132-1.4A(g), the Court concludes as follows:

(a) The recordings at issue, related to widespread protest and demonstrations that occurred for several days during the period September 20, 2016 through September 24, 2016, arise from and relate to a matter of significant local and national public interest regarding events

which occurred in Charlotte, and their release is necessary to advance a compelling public interest. This factor weighs in favor of release of the recordings.

(b) The recordings at issue are, pursuant to N.C.G.S. § 132-1.4A, not public records or personnel records, and are exempt from disclosure except as provided by the statute. Because this statute specifically provides for the release of such recordings in accordance with the statutory procedures, which have been followed in this matter, this factor is neutral.

(c) The Petitioner is not seeking release of the recordings in order to obtain evidence to determine legal issues in a current or potential court proceeding. This factor is, therefore, a neutral factor.

(d) The video recordings sought do not contain information of a highly sensitive personal nature in that they were made in very public places within the city of Charlotte in the presence of many individuals involved in the protests and demonstrations. There thus appear to be no privacy issues involving Mr. Borum or others, and no party to the proceedings raised any such issue. This factor therefore weighs in favor of release of the recordings.

(e) Release of the recordings would not improperly harm the reputation of any individual, and no party suggested this issue was a factor. This factor, therefore, weighs in favor of release of the recordings.

(f) Release of the recordings would not create a serious threat to the fair, impartial and orderly administration of justice. In light of the objections raised by the District Attorney's Office and counsel for Mr. Borum, the Court reviewed the portion of the September 21 "Omni" recording which these parties sought to have redacted from the video to be released (the Omni Video Segment). The Court has determined that release of this portion of the video will not

have a material impact on Mr. Borum's right to a fair trial. This factor, therefore, weighs in favor of release of the recordings in their entirety, including the Omni Video Segment.

(g) Confidentiality of the recordings is not necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation, and no party to the proceeding raised such an objection. This factor, therefore, is neutral, or weighs in favor of release of the recordings.

(h) There is good cause shown to release the recordings as noted in subparagraph (a) above. This factor weighs in favor of release of the recordings in their entirety.

3. Having considered the factors specifically required or otherwise permitted to be considered by the Court pursuant to N.C.G.S. § 132-1.4A(g), the Court has concluded that the recordings sought by Petitioner should be released in their entirety.

4. Copies of the recordings shall be released to Petitioner and to CMPD, who may, among other uses they deem appropriate, post the recordings on their websites and provide copies to other media entities who request them. In light of the significant efforts made by Petitioner to obtain access to these recordings, CMPD has consented and agreed that it will not post the recordings to its website or provide copies to other entities until three (3) hours have expired after release of the recordings to Petitioner.

IT IS, THEREFORE ORDERED, as follows:

1. Petitioner's request for release of the video records described in his August 28, 2017 Petition is hereby GRANTED.

2. The Charlotte-Mecklenburg Police Department, the custodian of the recordings sought by Petitioner, shall release to Petitioner within four (4) days of the entry of this Order copies of the recordings sought by Petitioner.

3. No sooner than three (3) hours after the release of the recordings to Petitioner, CMPD may post the recordings to its website and provide copies to others who request them.

4. CMPD and Petitioner are authorized to use the recordings as they deem appropriate, including the posting of the recordings on their websites and the providing of copies of the recordings to others.

SO ORDERED.

This the 12<sup>th</sup> day of September, 2017.



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Honorable Robert C. Ervin  
Superior Court Judge Presiding